



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE
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Matthew J. Strickler
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Director
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Thomas A. Faha
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Mr. Anthony C. Kim
FOR
Phoenix Automotive
VPDES Permit No. VAR05
Registration No. VAR051950**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Mr. Anthony C. Kim, regarding the Phoenix Automotive facility, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "2014 Permit" or "Permit" means VPDES Permit No. VAR05, the VPDES General Permit for Stormwater Discharges Associated with Industrial Activity, which was issued under the State Water Control Law and the Regulation on July 1, 2014 and which expires on June 30, 2019. A representative of Mr. Anthony C. Kim applied for coverage under General Permit No. VAG05 for Phoenix Automotive, and was issued Registration No. VAR051950 on August 26, 2014.
2. "2019 Permit" means VPDES Permit No. VAR05, the VPDES General Permit for Stormwater Discharges Associated with Industrial Activity, which was issued under the

State Water Control Law and the Regulation on July 1, 2019 and which expires on June 30, 2024. While under coverage of the 2014 Permit, Mr. Kim/Phoenix Automotive submitted a registration statement to apply for coverage under the 2019 Permit.

3. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
4. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. "Discharge" means discharge of a pollutant.
8. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
9. "DMR" means Discharge Monitoring Report.
10. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
11. "Facility" means the Phoenix Automotive business operations, located at 12256 Rixeyville Road, Culpeper County, Virginia, from which discharges of stormwater associated with industrial activities occurs.
12. "Mr. Kim" means Mr. Anthony C. Kim, currently a resident of Woodbridge, Prince William County, Virginia. Mr. Kim is a "person" within the meaning of Va. Code § 62.1-44.3.
13. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

14. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
15. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
16. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. 9 VAC 25-210-10.
17. "Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution." Va. Code § 62.1-44.3; 9 VAC 25-210-10.
18. "Regulation" means the General Virginia Pollutant Discharge VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
19. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
20. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
21. "SWPPP" means Stormwater Pollution Prevention Plan.
22. "TMDL" means Total Maximum Daily Load.
23. "Va. Code" means the Code of Virginia (1950), as amended.
24. "VAC" means the Virginia Administrative Code.
25. "VPDES" means Virginia Pollutant Discharge Elimination System.
26. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. Mr. Kim owns the Facility. The Permit allows Mr. Kim to discharge stormwater associated with industrial activities from the Facility, to an unnamed tributary of Muddy Run, in strict compliance with the terms and conditions of the Permit.
2. The unnamed tributary of Muddy Run has been neither monitored nor assessed. Based on DEQ's 2016 305(b) report, there were no listed impairments for the receiving stream or downstream that are applicable to this Facility. The downstream Rappahannock River has sections with a listed impairment for PCBs in fish tissue; however, the Facility is not required to monitor for PCBs.
3. Part I.A.1.b, of the Permit requires Mr. Kim to conduct benchmark monitoring of storm water discharges from the Facility for the presence of pollutants of concern once during each semi-annual monitoring period, and to record the benchmark monitoring results on a DMR.
4. Parts I.A., and II.C. of the Permit require Mr. Kim to submit the results of the benchmark and TMDL monitoring on a DMR to the Department by January 10 and July 10 of each year.
5. Mr. Kim has submitted several DMRs late, and failed to submit a DMR for one monitoring period as follows:
 - a. The benchmark monitoring DMR for January through June 2016 was due by July 10, 2016; DEQ received this DMR on July 18, 2016.
 - b. The DMR for Chesapeake Bay TMDL monitoring for January through June 2016 was due by July 10, 2016; DEQ received this DMR on July 18, 2016.
 - c. Mr. Kim failed to submit the benchmark monitoring DMR for July through December 2016.
 - d. The benchmark monitoring DMR for January through June 2017 was due by July 10, 2017; DEQ received this DMR on July 21, 2017.
 - e. The benchmark monitoring DMR for July through December 2017 was due by January 10, 2018; DEQ received this DMR in electronic format on January 15, 2019, but an original hardcopy with wet signature has not been received as of June 1, 2019.
 - f. The benchmark monitoring DMR for January through June 2018 was due by July 10, 2018; DEQ received this DMR in electronic format on January 15, 2019, but an original hardcopy with wet signature has not been received as of June 1, 2019.
6. DMRs submitted in compliance with benchmark monitoring requirements of the Permit show that Mr. Kim has reported that the Facility exceeded benchmark concentration values for one or more monitored pollutants, and failed to review and/or modify the Facility's SWPPP within 30 days of the reported exceedances. The benchmark exceedances reported on DMRs submitted by Mr. Kim are as follows:
 - a. TSS, total recoverable iron, and total recoverable aluminum for July through December 2015.

- b. TSS, total recoverable lead, total recoverable iron, and total recoverable aluminum for January through June 2016.
 - c. TSS, total recoverable iron, and total recoverable aluminum for January through June 2017.
 - d. total recoverable lead, total recoverable iron, and total recoverable aluminum for January through June 2018.
 - e. total recoverable iron and total recoverable aluminum for July through December 2018.
7. Part I.A.6.a. of the Permit requires a review, and modifications if necessary, of the Facility's SWPPP to address any deficiencies that contributed to an exceedance. SWPPP revisions are to be completed within 30 days after an exceedance is discovered, and when a control measure needs to be modified or added, that work should be completed no later than 60 days after the exceedance is discovered.
 8. DEQ staff performed inspections of the Facility and a review of Facility records on April 13, 2016, and on February 6, 2019.
 9. During the April 2016 Facility inspection, DEQ staff observed no quarterly visual monitoring inspections had been completed for the 3rd and 4th quarters of 2015 and the 1st quarter of 2016.

During the February 2019 Facility inspection, DEQ staff observed no quarterly visual monitoring inspections had been completed for the 3rd and 4th quarters of 2017 and for all four quarters of 2018.

10. Part I.A.1.a.(1) of the Permit requires that a quarterly visual examination of stormwater discharges from the Facility's outfalls be performed and documented. If no storm event resulted in runoff from the Facility during a monitoring quarter, visual monitoring for that quarter is excused, provided that documentation is included with the monitoring records indicating that no runoff occurred.
11. During the April 2016 Facility inspection, DEQ staff observed no quarterly routine facility inspections had been completed for the 3rd and 4th quarters of 2015 and the 1st quarter of 2016.

During the February 2019 Facility inspection, DEQ staff observed no quarterly routine facility inspections had been completed for the 3rd and 4th quarters of 2018.
12. Part III.B.5. of the Permit requires that quarterly routine facility inspections be performed and documented by Facility personnel who possess the knowledge and skills to adequately perform such inspections.
13. At the time of the April 2016 Facility inspection, DEQ staff observed that the Facility had not performed or documented any annual comprehensive site compliance evaluations.

14. Part III.E. of the Permit requires that an annual comprehensive site evaluation be performed and documented by qualified personnel who possess the knowledge and skills to adequately perform such evaluations. The qualified personnel may be a Facility employee or outside personnel hired by the Facility to perform the evaluation.

15. During the April 2016 Facility inspection, no employee training documentation was available for review.

During the February 2019 Facility inspection, no employee training records for 2017 were available for review.

16. Part III.B.4.b.(6) of the Permit requires the implementation and documentation of a stormwater employee training program at the Facility.

17. During the April 2016 Facility inspection, DEQ staff made the following observations concerning the Facility's housekeeping practices for preventing/limiting pollutants in stormwater discharges:

- a. Oil staining was observed on the ground near the vehicle dismantling area.
- b. Vehicle fluids, batteries, and parts (such as cores) were observed in partially dismantled cars that were not being properly covered/stored.
- c. A significant quantity of loose tires and metal parts were observed exposed/uncovered throughout the Facility.
- d. Several uncovered buckets with unknown contents and ground staining around the buckets were observed.

18. During the February 2019 Facility inspection, DEQ staff made the following observations concerning the Facility's housekeeping practices for preventing/limiting pollutants in stormwater discharges:

- a. Vehicle fluids, batteries, and parts (such as cores) were observed in partially dismantled cars that were not being properly covered/stored.
- b. Erosion channels were observed carrying stormwater offsite in several locations instead of that stormwater being adequately directed to the Facility's permitted outfall.

19. Part III.B.4.b.(1) of the Permit requires Mr. Kim to keep clean all exposed areas of the Facility that are potential sources of pollutants to stormwater discharges.

Part IV.B.2.a of the Permit requires that all vehicles be properly drained of all fluids prior to being dismantled or crushed, or that some other equivalent measures be taken to prevent fluid spills or leaks.

Part IV.B.2.d also states that it is the permittee's responsibility to implement control measures to divert, infiltrate, reuse, contain, or otherwise reduce stormwater runoff to minimize pollutants in the Facility's stormwater discharges.

20. During the February 2019 Facility inspection, no documentation was available for DEQ's review to show that the Facility's Chesapeake Bay TMDL monitoring data had been analyzed for determining the need for a Chesapeake Bay TMDL action plan. DEQ does not have record of the permittee submitting a Chesapeake Bay TMDL action plan for the Facility to DEQ, and no documentation has been presented to DEQ to demonstrate that such an action plan is not required for the Facility.
21. Part I.B.7.b.(3) of the Permit requires that the Facility's Chesapeake Bay TMDL monitoring data be analyzed to calculate the Facility's discharge loadings of pollutants of concern, in order to determine if additional action is needed. If the calculated loading of a pollutant of concern exceeds the established limit for that pollutant, then a Chesapeake Bay TMDL action plan is required to be developed and submitted to DEQ.
22. NRO issued one Warning Letter and five Notices of Violation to Mr. Kim for the violations described above in paragraphs C(1) through C(21) as follows:
 - a. WL No. W2016-05-N-1004 dated May 18, 2016;
 - b. Referral NOV No. W2016-08-N-0020 dated September 19, 2016;
 - c. NOV No. W2017-04-N-0009 dated April 17, 2017;
 - d. NOV No. W2018-03-N-0026 dated March 23, 2018;
 - e. NOV No. W2018-09-N-0006 dated September 11, 2018; and
 - f. NOV No. W2019-04-N-0001 dated April 18, 2019.
23. On May 8, 2019, DEQ received a written response to the April 18, 2019 NOV from a representative of Mr. Kim. The response stated that a hired consultant was at the Facility on April 30, 2019 to perform an annual site visit and that the housekeeping issues at the Facility had been addressed. The NOV response acknowledged the deficiencies cited in the NOV, and stated that the hired consultant assisted Facility personnel in correcting some items while at the Facility on April 30, 2019, and that the Facility was working toward achieving compliance.
24. Based on DEQ observations during the April 13, 2016 and February 6, 2019 inspections, the May 8, 2019 NOV reply, DEQ's review of submitted files, and correspondence between DEQ, Mr. Kim, and Phoenix Automotive employees, the Board concludes that Mr. Kim has violated Parts I.A.1.a.(1), I.A.1.b., I.A.2.d.(2), I.A.6.a., I.B.7.b.(3), II.C.1., III.B.4.b.(1), III.B.4.b.(6), III.B.5., III.E., IV.B.2.a., and IV.B.2.d. of the Permit, by discharging stormwater associated with industrial activity from the Facility while concurrently failing to comply with the conditions of the Permit, as described above in paragraphs C(1) through C(23).
25. On November 6, 2019, DEQ met with Mr. Kim and his representative, and on November 21, 2019, Mr. Kim's representative submitted photographic documentation of updated sections of the SWPPP to DEQ to resolve many of the outstanding violations. The documentation showed that Mr. Kim had completed employee training for the 2019 calendar year and has adequately been performing quarterly visual monitoring and routine quarterly facility inspections throughout 2019.

26. During the November 6, 2019 meeting, DEQ and Mr. Kim discussed the new 2019 Permit and how it related to this enforcement action and bringing the Facility into compliance. The 2019 Permit requires Phoenix Automotive to complete any Chesapeake Bay TMDL monitoring that was not performed by the County during the 2014-2019 permit cycle. Therefore, the Chesapeake Bay TMDL noncompliance described above in paragraphs C(20) and C(21) will be addressed via compliance with the 2019 Permit requirements and no further corrective actions for the issue are included as part of this Consent Order.
27. In order for Mr. Kim to return the Facility to compliance, DEQ staff and Mr. Kim have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 62.1-44.15, the Board orders Mr. Kim, and Mr. Kim agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of **\$7,454.00** in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
Within 30 days of execution of Order	\$2,485.00 or balance
Within 120 days of execution of Order	\$2,485.00 or balance
Within 210 days of execution of Order	\$2,484.00 or balance

3. If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Order, and the Department may demand in writing full payment by Mr. Kim. Within 15 days of receipt of such letter, Mr. Kim shall pay the remaining balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under this Order.
4. All payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

5. Mr. Kim shall include Phoenix Automotive's Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Mr. Kim shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Mr. Kim for good cause shown by Mr. Kim, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. W2019-04-N-0001 dated April 18, 2019, NOV No. W2018-09-N-0006 dated September 11, 2018, NOV No. W2018-03-N-0026 dated March 23, 2018, NOV No. W2017-04-N-0009 dated April 17, 2017, referral NOV No. W2016-08-N-0020 dated September 19, 2016, and WL No. W2016-05-N-1004 dated May 18, 2016. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Mr. Kim admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Mr. Kim consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Mr. Kim declares he has received fair and due process under the Administrative Process Act and the State Water Control Law and he waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Mr. Kim to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Mr. Kim shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Mr. Kim shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Mr. Kim shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

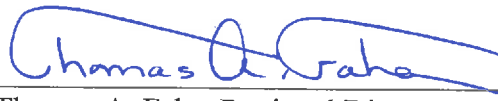
Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Mr. Kim. Nevertheless, Mr. Kim agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Mr. Kim has completed all of the requirements of the Order;
 - b. Mr. Kim petitions the Director or his designee to terminate the Order after he has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Mr. Kim.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Mr. Kim from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Mr. Kim and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. Any documents to be submitted pursuant to this Order shall be submitted by Mr. Kim or an authorized representative of Mr. Kim.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By his signature below, Mr. Kim voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 23rd day of March, 2020.



Thomas A. Faha, Regional Director
Department of Environmental Quality

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Consent Order

Mr. Anthony C. Kim; VPDES Permit Registration No. VAR051950

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Mr. Anthony Kim voluntarily agrees to the issuance of this Order.

Date: 1/14/2020 By: _____

(Person)

Mr. Anthony Kim

Commonwealth of Virginia

City/County of Prince William

The foregoing document was signed and acknowledged before me this 14 day of

January, 2020, by Katarzyna Ornelas

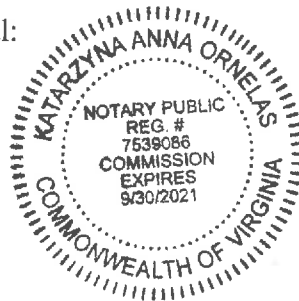
Notary Public

7539086

Registration No.

My commission expires: 09/30/2021

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

Mr. Anthony Kim shall:

1. Within 30 days of the effective date of this Order, submit to DEQ original hardcopies (with the permittee's wet signature) of the benchmark monitoring DMRs for January through June 2017 and for July through December 2017.
2. Within 60 days of the effective date of this Order, submit a plan and schedule to DEQ for review and comment, which lists the steps the permittee intends to take to address reported exceedances of benchmark monitoring values for the following pollutants: TSS, total recoverable lead, total recoverable iron, and total recoverable aluminum. The plan and schedule shall include a plan to document any corrective actions taken in the SWPPP for the Facility, as required by the Permit. The permittee shall respond to DEQ's comments on the plan and schedule within 14 days or by a later date approved by DEQ in writing. Once notified by DEQ that the plan is acceptable, the permittee shall implement said plan and schedule, which will become enforceable pursuant to this Order.
3. Within 90 days of the effective date of this Order, submit to DEQ a revised/updated SWPPP for the Facility that is in full compliance with Part III of the Permit.
4. Unless otherwise specified in this Order, Mr. Kim shall submit all requirements of Appendix A of this Order to:

Virginia Department of Environmental Quality
Northern Regional Office
Attention: Enforcement
13901 Crown Court
Woodbridge, VA 22193